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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-805

ELVINA BUGG ET AL.,

Appellants,

v.

MARYLAND TRANSPORTATION AUTHORITY,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

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APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS

Pursuant to the provisions of Supreme Court Rule 16, the Maryland Transportation Authority (the Authority), the Appellee, moves the court to dismiss the appeal noted herein on the ground that the Court of Appeals of Maryland rendered no decision in the matter at bar.

In the alternative, treating the notice of appeal and the Jurisdictional Statement improvidently filed herein as an appeal from the decision of the Court of Special Appeals of Maryland, the Authority, pursuant to the provisions of Supreme Court Rule 16, moves the court to dismiss the appeal:

(1) On the ground that the Court does not have jurisdiction to review, by way of appeal, a decision of a state court in which the constitutional validity of a state statute was not drawn into question;

(2) on the ground that the appeal does not present a substantial federal question; and/or

(3) on the ground that the judgment below rests on an adequate non-federal basis.

Treating the notice of appeal and the Jurisdictional Statement improvidently filed herein as a petition or certiorari, the Authority, pursuant to the provisions of Supreme Court Rule 24, submits the following in opposition thereto.

OPINION BELOW

The Court of Appeals of Maryland did not issue an opinion in the matter at bar. The opinion of the Court of Special Appeals of Maryland has been reported at 31 Md. App. 622 and at 358 A.2d 562.

JURISDICTION

The Appellees (the Buggs) allegedly have sought review in the Court by way of "a direct Appeal" (J. 1) and to that end have filed a Jurisdictional Statement "pursuant to Supreme Court Rules 13(2) and 15." (*Id.*) However, they have asserted jurisdiction under 28 U.S.C. §1257(3), (J. 4) which, of course, provides for this Court to exercise jurisdiction by writ of certiorari, not by appeal. The Authority agrees that this Court may review the judgment below, if at all, by way of certiorari only.

STATEMENT

Some nine years ago the Court of Appeals of Maryland affirmed the dismissal of an ejectment action in which Mr. and Mrs. Pink Bugg of Cokesbury, Maryland, claimed title to some fourteen acres of land upon which the State had constructed a portion of Interstate Route 95 (known then as the Northwestern Expressway and now as the John F. Kennedy Memorial

Highway). *Bugg v. State Roads Commission,* 250 Md. 459, 243 A.2d 511 (1968). In so doing, the court traced the history of the Bugg claim and observed, "[t]his case marks the end of a long trail which Mr. and Mrs. Bugg have travelled for some eight years." 250 Md. at 460, 243 A.2d at 511 Alas, "[t]he seeming tolling of the knell for the 'Bugg-State Roads' controversy was, in the words of the late Samuel Langhorne Clemens (Mark Twain) 'greatly exaggerated.'"[1] *Bugg v. Maryland Transportation Authority,* 31 Md. App. 622, 623, 358 A.2d 562, 564 (1976). (1a.) Indeed, although Mr. Bugg, "an elderly litigious man"[2] who "achieved the status of [a] frequent visitor" to the Court of Appeals of Maryland,[3] died on September 5, 1973, his quixotic *cause celebre* continues to be litigated *ad nauseam.*[4]

[1] "Embodied in a cable from London, England, in 1897 to the Associated Press, the full text read: 'The reports of my death have been greatly exaggerated.'"

[2] Bugg v. Carpenter, 261 Md. 161, 273 A.2d 140 (1971).

[3] Bugg v. Trustees of Cokesbury Baptist Church, 252 Md. 59, 60, 248 A.2d 879 (1969).

[4] Bugg, et ux. v. William Cooper, et al., Circuit Court for Cecil County, Equity #9111; In re State Roads Commission, Right of Way Acquisition, Chas. McKeever, Dorothy Shivery, Pink Bugg et ux., In the Circuit Court for Cecil County, Contract No. N.E. 107, Item No. 330, Project Northeastern Expressway; Mackie, Treasurer of Cecil County v. Bugg, In the Circuit Court for Cecil County, Equity #9405; Bugg, et ux. v. Bramble, et al., Circuit Court for Cecil County, Equity #2254-B; McKeever, et al. v. Bugg, et ux., Circuit Court for Cecil County, Law #4991 (removed to the Circuit Court for Kent County and tried there as Law #1831); Bugg, et ux. v. Maryland State Roads Commission, Circuit Court for Cecil County, Law #7869, aff'd, 205 Md. 459, *supra;* Bugg, et ux. v. Maryland State Roads Commission, Circuit Court for Cecil County, Law #9239; Bugg, et ux. v. Maryland State Highway Commission, et al. (amended to Maryland Transportation Authority, et al.), Circuit Court for Cecil County, Law #10607. Bugg v. Maryland Transportation Authority et al., Circuit Court for Cecil County, Equity #3927-B (the matter at bar).

Consequently, "what follows is yet another canto in the saga of Pink Bugg, Cokesbury's dauntless appellant."[5]

Since an understanding of the ever-lengthening background of this unnecessarily complicated and fluid claim is essential to a proper understanding of the context in which the issues at bar are presented, it is necessary to review the meandering history of this increasingly frivolous controversy.

On August 11, 1958, Pink Bugg and Elvina Bugg, his wife, purchased, for $140 at a tax sale, a parcel of unimproved land described in the advertisement of sale as containing approximately *2* acres and assessed to the William Cooper estate (R. 73). Thereafter, Mr. Bugg took a surveyor to the property which he thought he had bought and indicated what he believed to be the boundaries. A description was thus prepared *at Mr. Bugg's direction. Bugg v. State Roads Commission, supra,* 250 Md. at 460, 243 A.2d at 511, 512.

On January 6, 1960, the Buggs filed a bill of complaint in the Circuit Court for Cecil County, Equity No. 9111, to foreclose the right of redemption of William Cooper deceased, and the William Cooper estate, and all persons claiming to have an interest in a parcel of unimproved land containing *14.160* acres more or less. An order of publication was duly published in a newspaper in Cecil County (R. 73).

On June 15, 1960, there having been no answer filed to the bill of complaint, the Court published a decree foreclosing the right of redemption and vesting the fee simple title thereto in Pink Bugg and Elvina Bugg, his wife, and further ordering that the County Treasurer prepare and execute a deed therefor to the purchasers. (*Id.*)

[5] Bugg v. Cecil County Commissioners, 261 Md. 507, 508, 276 A.2d 31 (1971).

On June 17, 1960, the County Treasurer executed a deed, provided by Mr. Bugg's attorney and containing the description prepared by Mr. Bugg's surveyor, purporting to convey the William Cooper estate to Pink Bugg and Elvina Bugg, his wife, as tenants by the entireties. (*Id.*)

In 1961, the State Roads Commission instituted proceedings for the acquisition of 12.5 acres of a tract of land in connection with the construction of the then Northeastern Expressway (now John F. Kennedy Memorial Highway) and deposited the sum of $3,125, which it believed to be the fair market value of the property. Apparently as a result of the Commission's title examination, Mr. and Mrs. Bugg, Mr. Charles McKeever, Mrs. Marie McKeiver, Mrs. Dorothy M. Shivery and Mr. R. E. Shivery were named as defendants. *Bugg v. State Roads Commission, supra,* 250 Md. at 460, 243 A.2d at 512.

Subsequent to the filing of the Commission's suit, Mr. McKeever and Mrs. Shivery, as heirs of one Phillip Smeltzer, brought an action in ejectment against Mr. and Mrs. Bugg. Instituted in the Circuit Court for Cecil County, this action was removed to Kent County, Maryland, and tried before the Circuit Court for Kent County. That court found: that the property which was the subject of the tax deed was not the property of the William Cooper estate, but rather the property of the Phillip Smeltzer estate; that there were no taxes due on the Smeltzer estate; and consequently, (a tax sale of property on which taxes have been paid being invalid) that the Buggs had no interest in the property described in the tax deed. No appeal was taken from that judgment. *Id.*

"As a consequence of the McKeever and Shivery victory in the ejectment suit, the Commission amended its petition in the condemnation suit, eliminating all

defendants other than Mr. McKeever and Mrs. Shivery, with the result that they received the $3,125 deposited with the court clerk in connection with the taking." *Ibid,* 250 Md. at 461, 243 A.2d at 512.

"On May 26, 1967, the Buggs filed suit for ejectment against the Maryland State Roads Commission, . . . from the land which they claimed under their deed. Upon motion by the Commission the Court dismissed the case, holding that the ejectment suit in Kent County established that they had no title to the land described in their deed." (R. 74). On appeal, the Court of Appeals of Maryland affirmed. *Bugg v. State Road Commission, supra,* 250 Md. at 461, 243 A.2d at 512.

Apparently around 1972 the Buggs secured another survey, obtained another description, and petitioned the Circuit Court for Cecil County to correct their deed accordingly. In answer to an order to show cause, if any there be, why the deed should not be reformed as prayed, the County Treasurer filed an answer contending that the Authority holds title to the land and therefore should be made a party to the proceeding (R. 74). The Court disagreed. Viewing the action before it as merely an action to reform a deed to reflect the intention of the parties thereto and realizing that the Treasurer necessarily warrants nothing in a tax sale, the Court concluded that the matter before it was "not a proceeding to try the title to the property involved." (R. 75). Thereupon, the court refused to permit the Authority to enter the case and ordered the Treasurer to sign a corrected deed (R. 75-77).

On August 2, 1974, appellant Gary Bugg, as "administrator of the estate of Pink Bugg, deceased,"[6] filed what the Chancellor later termed "a paper writing

[6] According to the bill, Mr. Bugg died "survived by a wife, Nora Bell Bugg, a resident now of the State of New York, two sons, Gary Bugg and William Bugg and a sister, Lucille Smalls, also residents of the State of New York . . ." (R. 1).

entitled 'Bill In Equity For Damages'" (R. 50). Appended with two exhibits[7] and accompanied by a *Prayer for Jury Trial,* the bill was filed in the Circuit Court for Cecil County and docketed as Equity #3927-B. Named as defendants were the Authority and the mythical John F. Kennedy Memorial Highway Commission. In pertinent part, the bill alleged that the decedent had acquired a certain 13 acre tract of land in Cecil County on August 11, 1958; that he was in peaceful possession thereof until on or about July 2, 1962, when the Authority's predecessor-in-interest, the State Roads Commission, wrongfully ejected him therefrom and appropriated the same for use in connection with the John F. Kennedy Memorial Highway; that Mr. Pink Bugg "was not made a party to any suit or proceeding of taking"; that such action took place without due process of law and without payment of compensation to Mr. Bugg;[8] that Mr. Bugg's original deed was corrected on August 25, 1972; and that the defendants refused to return the property to Mr. Bugg. Thereupon, the bill claimed money damages in the amount of 10 million dollars[9] (R. 1-9).

Responding to the bill, the Authority filed a demurrer and raised the preliminary objection of sovereign immunity (R. 11-22). Although plaintiff Gary Bugg previously had denied that Mrs. Elvina Bugg had either married or survived his father (R. 35), Mrs. Elvina Bugg soon entered the case as a party plaintiff (R. 43-44). On

[7] The 1972 corrected deed (R. 5-8) and a survey plat (R. 9).

[8] Appellants claim that the State Roads Commission condemned the property in question and paid compensation therefor to the wrong individuals was first asserted in the Court of Special Appeals, not in the trial court.

[9] The enormous amount of the claim does not stem from the alleged fair market value of the 13 acre tract at the time it was taken; rather, is founded upon the even less reasonable (indeed, pyritic) illusion that the tolls which the State has collected on this site are recoverable as rents and profits of the land.

November 14, 1974, the Chancellor issued an Opinion and Order sustaining the demurrer with leave to amend (R. 50-51).

On December 13, 1974, an Amended Bill of Complaint was filed on behalf of Mrs. Elvina Bugg and Mr. Gary Bugg (R. 55-62). Again named as a defendant, the Authority was expressly acknowledged to be "an agency of the State of Maryland" and candidly "sued in its capacity as such." (R. 55). Named in place of the mythical John F. Kennedy Memorial Highway Commission was the equally ficticious John F. Kennedy Memorial Highway Administration.[10]

Generously nourished by some different allegations of fact[11] and by conclusions of law, this version of the Bugg claim explicitly recognized that it was founded upon a cause of action[12] which would be barred by the doctrine of sovereign immunity were it brought at law (R. 58). Thus, apparently on the theory that sovereign immunity is not recognized by Maryland's equity courts, the Amended Bill sought injunctive as well as monetary relief. Specifically, the Amended Bill would have had the Chancellor: (1) enjoin the Authority from denying the Buggs access to and entry upon the property; (2) require the Authority to remove any and all structures which it had erected on the property; (3) forbid the Authority, its licensees *et al.* from using the highway without due compensation to the Buggs; (4) compel the

[10] Owing to its nonexistence, the Administration was not served, did not appear and consequently is not a party litigant (A. 5a, n.6).

[11] E.g., although founded upon exactly the same survey plat, corrected deed and order of court, this version claimed title to a 15.406 acre trace (R. 55). Moreover, noticeably unlike the original bill, the Amended Bill did not assert that Mr. Pink Bugg died "survived by a wife, Nora Bell Bugg, now of New York." Rather, according to the Amended Bill, Mr. Bugg died "survived by Elvina Bugg" *et al.* (R. 57).

[12] Characterized on appeal as "one of ejectment".

Authority to divert traffic around the property; (5) require the Authority to regarde the property wherever it had erected roadways or structures; (6) order the Authority to account for all rents and profits derived from the use of the land; and (7) mandate the Authority to make restitution in the amount of 10 million dollars (R. 60-62).

Appended to the Amended Bill were four exhibits: a 1972 corrected deed from the Treasurer of Cecil County to "Pink Bugg and Elvina Bugg, his wife . . . as tenants by the Entireties" (R. 63); a 1972 "line of possession survey" plat of a 15.406 acre tract of land alleged to be "formerly the Wm. Cooper Estate" (R. 68-70);[13] a June 15, 1972 Memorandum Opinion of the Circuit Court for Cecil County[14] (R. 73-77); and the 1960 deed from the Treasurer to "Pink Bugg and Elvina Bugg, his wife . . . as tenants by the entireties" (R. 71-72).

On February 18, 1975, having unsuccessfully moved the trial court not to receive or, in the alternative, to strike the Amended Bill (R. 78), the Authority filed a motion raising the preliminary object of sovereign immunity (R. 83-84).[15]

On September 23, 1975, the matter having been fully briefed and argument thereon having been heard, the

[13] Inter alia, the western boundary of the tract carries the fatal notation, "line of division as pointed out by Mr. Bugg."

[14] As previously indicated, even a cursory reading of this opinion reveals that the Chancellor was not deciding "title to the property involved." Rather, he was merely reforming the instrument to reflect the intention of the parties to the original tax sale deed.

[15] The motion was founded upon the assertion that, even if the Buggs were the rightful owners of the land in question, a taking thereof without payment of compensation was not, as a matter of law, an act of the State, but rather an ultra vires act of a state official or employee for which the individual official or employee and not the State is answerable.

Chancellor issued an order and opinion in which, pursuant to the decision in *Dunne v. State,* 162 Md. 274, 159 A. 751 (1932), *app. dism'd and cert. den.* 287 U.S. 564; the Authority, as an agency of the State of Maryland, was held to be immune from suit, even from an action based on the allegedly unlawful taking of private property (R. 112-115).

On October 3, 1975, the Buggs noted an appeal to the Court of Special Appeals of Maryland (R. 116). On June 7, 1975, that Court affirmed the judgment of the Circuit Court for Cecil County. *Bugg v. Maryland Transportation Authority, supra* (A. 1a). In so doing, the Court of Special Appeals not only agreed that the doctrine of sovereign immunity barred the instant action, (A. 10a-12a), but, in response to the Bugg's newest claim (i.e., that there had been a condemnation proceeding in which the Authority's predecessor had paid the wrong claimant) and in an apparent attempt at thwarting further "cantos" in this "continuing saga," the Court also held that payment by the State, as a condemnor of land, to a court-determined holder of legal title *ipso facto* made the State a *bona fide* purchaser of the property without notice of adverse claims, and consequently not thereafter answerable to the holder of a subsequently corrected deed (A. 10a).

On or about August 11, 1976, the Buggs filed a petition in the Court of Appeals of Maryland for a writ of certiorari to the Court of Special Appeals of Maryland. On September 14, 1976, the Court of Appeals entered an order denying the petition on the ground that there had been no showing that review by certiorari was desirable or in the public interest (A. 13a).

On or about October 7, 1976, a notice of the instant "appeal" was filed in the Court of Appeals of Maryland (A. 14a). The "appeal" was docketed in this court on December 13, 1976.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Buggs have correctly stated the Fourteenth Amendment.[16]

28 U.S.C. §1257, 62 Stat. 929, provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of

[16] However, there is no equal protection claim at bar. Thus, while the second question presented in the Jurisdictional Statement asserts a denial of equal protection, that claim is wholly unsupported. There simply are no facts alleged which arguably suggest discrimination in contravention of the Equal Protection Clause. If the Buggs have a constitutional complaint, it is that they were denied due process, not equal protection. Similarly, although the first question presented in the Jurisdictional Statement asserts a denial of due process in violation of the Fifth Amendment, the Fifth Amendment does not, by its own force, apply to or restrict the State's eminent domain authority. Winous Point Shooting Club v. Caspersen, 193 U.S. 189 (1904). Rather, the Fifth Amendment has been applied to the states only through the Fourteenth Amendment. Accordingly, the questions presented herein must be examined under the Fourteenth Amendment, Finally, although the Jurisdictional Statement cites Article 23 of the Maryland Declaration of Rights and Article 23 of the Maryland Constitution, those provisions are not challenged as contravening the U.S. Constitution. Absent such a challenge, their construction is not within the constitutional compentence of this court.

the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

There are no regulations involved in this matter.

QUESTIONS PRESENTED

1. Is the Due Process Clause of the Fourteenth Amendment offended by a state court decision which applies the doctrine of sovereign immunity so as to require that an action on behalf of the alleged owner of property claimed to have been unlawfully taken by the State be brought against the state official or employee responsible for the alleged taking and not against the State or an agency or instrumentality thereof?

2. Is the Due Process Clause of the Fourteenth Amendment offended by a state court decision which holds that payment by the State, as a condemnor of land, to a court-determined holder of legal title *ipso facto* makes the State a *bona fide* purchaser without notice of adverse claims and thereafter not answerable to the holder of a subsequently corrected deed?

ARGUMENT

NO APPEAL LIES HEREIN FROM THE COURT OF APPEALS OF MARYLAND.

Where, as here, a state's intermediate appellate court affirms the judgment of a *nisi prius* court and the state's highest court thereafter refuses an application for a writ of certiorari, an appeal to this court, if otherwise proper, is from the decision of the intermediate appellate court, and an appeal from the state's highest court will be dismissed. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 160 (1954). Accordingly, the appeal from the Court of Appeals of Maryland must be dismissed.

NO APPEAL LIES FROM THE DECISION OF THE COURT OF SPECIAL APPEALS OF MARYLAND.

This court has jurisdiction to review a decision of a state appellate court by appeal only where there is drawn into question the validity of a state *statute* on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision below was in favor of its validity. 62 Stat. 929, 28 U.S.C. §1257(2); *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961). There is no state statute at issue in the matter at bar. Accordingly, the appeal from the decision of the Court of Special Appeals of Maryland must be denied and, if this court is to review the judgment below, it must do so by certiorari.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

It is axiomatic that a real and substantial federal question is essential to the jurisdiction of this Court. Whether the asserted jurisdiction be by way of appeal or by writ of certiorari, this court may not assume jurisdiction to review a state court judgment where the federal claim is so wanting in foundation and so unsubstantial as to be devoid of all merit and frivolous. *California Water Service Co. v. Redding*, 304 U.S. 252 (1938). See, Supreme Court Rules, Rule 16(b) and 19(1)(a).

In *Bugg v. Cecil County Commissioners, supra,* 261 Md. at 515, 276 A.2d at 35 (1971), the Court of Appeals of Maryland observed, "close scrutiny reveals with embarassing clarity the fact that Bugg's answer to the motion for summary judgment is little more than so much twaddle." In the light of: (a) the record herein; (b) the patent failure of the Buggs to cite even one decision of *any* court in favor of their embarrassingly bare claim; and (c) the prior decisions of this court which

support the judgment below,[17] the claim at bar is but a blatant continuation of that regrettable tradition.

Accordingly, pursuant to the provisions of Supreme Court Rule 16(b), this appeal must be dismissed for want of a substantial federal question. Moreover, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ should be denied pursuant to Supreme Court Rule 19(1)(a), for failure to present "a federal question of substance either not theretofore determined by the court or decided in a way probably not in accord with applicable decisions of this court."

THE JUDGMENT BELOW RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Assuming, *arguendo,* that Mr. and Mrs. Bugg somehow eventually acquired title to the disputed property via the exceedingly belatedly corrected deed, it is well settled, as a matter of State law *and federal common law,* that, having paid compensation to an

[17] As to sovereign immunity, see, Hans v. Louisiana, 134 U.S. 1, 15 (1890), in which this court acknowledged that the suability of a State without its consent is a thing unknown to the law and unchanged by the Constitution; and Poindexter v. Greenshow, 114 U.S. 270, (1885), in which this court observed that the State "itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that, it is a lawless usurpation. * * * It is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for, as it can speak and act only by the law, whatever it does say and do must be lawful. That which, therefore, is unlawful because so made by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name." See also, Hopkins v. Clemson Agricultural College, 221 U.S. 636 (1911). As to the constitutional validity of the bona fide purchaser-condemnor doctrine, see United States v. Dunnington, 146 U.S. 338, 351-354 (1892).

award of court, a condemnor is not liable to an adverse claimant, even when the court award was erroneous and the adverse claimant was the real owner of the land. See, *City of St. Paul v. Certain Lands,* 48 F.2d 805 (8th Cir. 1931); *Cuyahoga County v. United States,* 294 F.2d 775 (Ct. Cl. 1961); *United States v. Certain Parcels of Land,* 40 F. Supp. 436 (D. Md. 1941); *In re Sea Beach Ry.,* 148 N.Y.S. 1080 (1907), *aff'd,* 196 N.Y. 533, 89 N.E. 1112 (1909); *Nolan v. City of New York,* 179 Misc. 1011, 39 N.Y.S.2d 360 (1942); *Eyre v. Fairbault,* 141 N.W. 170 (Minn. 1913); 29A C.J.S. *Eminent Domain* §205, at 919 (1965).

Accordingly, the appeal noted herein should be dismissed on the further ground that the judgment below rests on an adequate non-federal basis. Moreover, treating, as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ should be denied on the ground that the judgment below rests on an adequate non-federal basis.

THE BUGGS HAVE FATALLY FAILED TO PRESENT THEIR CLAIM WITH SUFFICIENT ACCURACY, BREVITY AND CLARITY.

Finally, "[t]he failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration" is a sufficient reason for denying a petition for certiorari. Supreme Court Rule 23(4). If Rule 23(4) is to have any vitality, it must be applied in the matter at bar. Accordingly, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, the writ must be denied for failure to state the claim with that accuracy, brevity and clarity which is a prerequisite to discretionary review by this court.

CONCLUSION

For the reasons assigned, the appeal noted herein must be dismissed, and, treating as a petition for certiorari the papers whereby the appeal herein was improvidently noted, certiorari must be denied.

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